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Attorneys for Parties-in-Interest

*MARY PETERSEN, INDIVIDUALLY AND AS TRUSTEE OF THE MARY PETERSEN FAMILY TRUST
DTD 8/12/98; MICHAEL PETERSEN, INDIVIDUALLY AND AS TRUSTEE OF THE MICHAEL D.
PETERSEN FAMILY TRUST DTD 8/12/98; KATHRYN PETERSEN INDIVIDUALLY AND AS TRUSTEE
OF THE KATHRYN L. PETERSEN LIVING TRUST AND THE KLP TRUST DTD 7/15/99*

UNITED STATES BANKRUPTCY COURT**DISTRICT OF NEVADA**

In Re:) CASE Nos.:
) BK-S-06-10725 LBR
USA COMMERCIAL MORTGAGE) BK-S-06-10726-LBR
COMPANY,) BK-S-06-10727-LBR
) BK-S-06-10728-LBR
Debtor.) BK-S-06-10729-LBR

In Re:) JOINTLY ADMINISTERED
) Chapter 11 Cases
USA CAPITAL REALTY ADVISORS, LLC,)
) Judge Linda B. Riegler
Debtor.)

) **LIMITED OPPOSITION TO SECOND**
) **SUPPLEMENTAL FILINGS IN SUPPORT**
In Re:) **OF APPLICATION TO COMPROMISE**
) **AND SETTLE CONTROVERSIES WITH**
USA CAPITAL DIVERSIFIED TRUST) **BEADLE, MCBRIDE, EVANS & REEVES,**
DEED FUND, LLC,) **LLP, ET AL. FILED ON BEHALF OF**
) **GEOFFREY BERMAN AND MICHAEL**
Debtor.) **TUCKER**

Hearing Date: December 8, 2008

Hearing Time: 1:30 p.m.

1 In Re:)

2 USA CAPITAL FIRST TRUST DEED FUND,))

3 LLC,)

4 Debtor.)

5 _____)

6 In Re:)

7 USA SECURITIES, LLC,)

8 Debtor.)

9 _____)

9 Affects:)

10 ☒ All Debtors)

11 ☐ USA Commercial Mortgage Company)

12 ☐ USA Capital Realty Advisors, LLC)

13 ☐ USA Capital Diversified Trust Deed Fund,)

14 LLC)

15 ☐ USA Commercial Mortgage Company)

16 ☐ USA Commercial Mortgage Company)

17 Parties-in-Interest Mary Petersen, Individually and as Trustee of the Mary Petersen Family
 18 Trust DTD 8/12/98; Michael Petersen, Individually and as Trustee of the Michael D. Petersen
 19 Family Trust DTD 8/12/98; and Kathryn Petersen, Individually and as Trustee of the Kathryn L.
 20 Petersen Living Trust and the KLP Trust DTD 7/15/99 (collectively, the "Petersens") submit the
 21 following Limited Opposition to Geoffrey Berman, Trustee ("Trustee") of the USACM Liquidating
 22 Trust (the "USACM Trust") and Michael Tucker, Manager ("Manager") of the USA Capital
 23 Diversified Trust Deed Fund, LLC's ("DTDF") Second Supplemental Filing in Support of
 24 Application to Compromise and Settle Controversies with Beadle, McBride, Evans & Reeves,
 25 LLP, et al. ("BMER") and specifically Paragraphs One and Fourteen of the proposed Findings of
 26 Fact and Paragraph One of the Conclusions of Law In Support of Order Approving Settlement with
 27 BMER included in the Second Supplement filed with this Court on December 4, 2008
 28

1 (Doc#66531). The Petersens expressly consent to submit this matter on the papers or alternatively
2 consent to a telephonic appearance by all counsel at the hearing currently scheduled for December
3 8, 2008 at 1:30 p.m. to address these focused issues.

4 Counsel for USACM Trust and the Petersens have previously discussed the proposed
5 Findings of Fact and Conclusions of Law filed with this Court on November 24, 2008. As a result,
6 USACM filed a revised findings of fact and conclusions of law with this Court on December 4,
7 2008. The Petersens' remaining objections to the supplemental filings are set forth below.

8 Paragraph One of the Proposed Findings of Fact and Paragraph One of the Conclusion of
9 Law state as follows, respectively:

10 I. Notice of the Motion ("Notice") was properly served on all creditors of the above-
11 titled estates, including to persons and entities who might reasonably be anticipated to have claims
12 for indemnification and/or contribution.

13 I. Notice has been given to all parties to the above-titled estates, including to persons
14 and entities who might reasonably be anticipated to have claims for indemnification and/or
15 contribution.

16 Objection: This proposed finding is vague and not consistent with the Court's ruling. The
17 Court did not find that notice was made to all persons who have such claims or who might
18 reasonably be anticipated to have claims for indemnification and/or contribution. In fact, the Court
19 opined, "The cases require me to look and see about whether or not, for example, Beadle is paying
20 more than its aliquot share in the universe. I don't even know what the other claims are out there
21 That is weighing the various levels of contribution. I don't even know who the other people
22 are, and I don't think it's appropriate, and I sincerely doubt that I have the ability to do this by
23 motion practice." See Reporter's Transcript of Proceedings for 11/18/08 at 35, 53.

1 As a result, these proposed Findings of Fact and Conclusions of Law should be stricken.
2 Any findings or conclusions of law related to Notice should be consistent with Rule 2002 and 9019
3 and therefore state "Notice of the Motion ("Notice") was properly served on all creditors of the
4 above-titled estates."

5
6 Paragraph Fourteen of the Proposed Findings of Fact states as follows:

7 14. There was no collusion, fraud, or tortious conduct aimed to injure the interests of
8 any non-settling defendants in connection with the negotiation and execution of the Settlement
9 Agreement.

10 Objection: This proposed finding is not consistent with the Court's previous findings nor
11 consistent with the intent and proposed purpose of such a finding. The purported purpose of it is to
12 address Plaintiff's conduct during the settlement process. As a result, if such a finding is
13 necessary, it should be consistent with such spirit and purpose.

14
15 As a result, the proposed finding should be stricken. If this Court deems such a finding
16 necessary, then it should be consistent with the spirit and intent for such a finding and state, "There
17 was no collusion, fraud, or tortious conduct in connection with the negotiation and execution of the
18 Settlement Agreement."

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Wherefore, premises considered, the Petersens respectfully request this Court to require USAMC Trust and DTDF to make the requested changes to the Supplemental Proposed Findings of Fact and Conclusions of Law.

DATED: December 5, 2008

O'REILLY LAW GROUP, LLC

By: /s/ Timothy R. O'Reilly

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Mary Petersen, Individually and as Trustee of the
Mary Petersen Family Trust DTD 8/12/98;
Michael Petersen, Individually and as Trustee of
the Michael D. Petersen Family Trust DTD
8/12/98; Kathryn Petersen, Individually and as
Trustee of the Kathryn L. Petersen Living Trust
and the KLP Trust DTD 7/15/99

DATED: December 5, 2008

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Petersen Family Trust DTD 8/12/98; Michael Petersen,
Individually and as Trustee of the Michael D. Petersen
Family Trust DTD 8/12/98; Kathryn Petersen
Individually and as Trustee of the Kathryn L. Petersen
Living Trust and the KLP Trust DTD 7/15/99

1 PROOF OF SERVICE

2 I HEREBY CERTIFY, pursuant to LR 5-1, that on this 5th day of December 2008, I served
 3 the above and foregoing LIMITED OPPOSITION TO SECOND SUPPLEMENTAL
 4 FILINGS IN SUPPORT OF APPLICATION TO COMPROMISE AND SETTLE
 5 CONTROVERSIES WITH BEADLE, MCBRIDE, EVANS & REEVES, LLP, ET AL.
 6 FILED ON BEHALF OF GEOFFREY BERMAN AND MICHAEL TUCKER in accordance
 7 with Fed. R. Civ. P. 5(b)(2)(B) by placing a copy of same in a sealed envelope, with postage fully
 8 prepaid thereon, and sending via U.S. mail to the following:

9
 10 Eric D. Madden, Esq.
 11 Diamond McCarthy LLP
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 13 Dallas, Texas 75270
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 15 Special Litigation Counsel for USACM LIQUIDATING TRUST and USA CAPITAL
 16 DIVERSIFIED TRUST DEED FUND, LLC

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 Co-Counsel for Defendants MARY PETERSEN, individually and as Trustee of the Mary Petersen
 Family Trust dtd 8/12/98; MICHAEL PETERSEN, individually and as Trustee of the Michael D.
 Petersen Family Trust dtd 8/12/98; and KATHRYN PETERSEN, individually and as Trustee of the
 Kathryn L. Petersen Living Trust and the KLP Trust dtd 7/15/99

25
 26 
 27 An Employee of O'REILLY LAW GROUP, LLC
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